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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,245	02/18/2004	Rogier Receveur	P0011377.00	3142
27581	7590	10/31/2007		
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924			EXAMINER SMITH, TERRI L	
			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			10/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/781,245

Applicant(s)

RECEVEUR ET AL.

Examiner

Terri L. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 September 2007 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1–12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the Applicant regards as his invention.

4. Claims 11–12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In claim 11, the term “a sensor” is inferentially included. It cannot be determined if a sensor is being positively recited or functionally recited. To positively claim a sensor, it is suggested to first positively recite a sensor. Otherwise, functional language such as “for” or “adapted to be” should be used.

Additionally, claim 11 recites the limitation “the insulating ring.” There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 3–10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al., U.S. Patent 4,543,954.

7. Regarding claims 1, 3, 9, 10, Cook et al. disclose a sleeve (e.g., FIG. 6, elements 61-flexible plastic trilumen tubing and 62-plastic tubing portion which is the distal portion of catheter assembly 60); a thermal insulator (e.g., element 64-medical grade epoxy where it is inherent that the medical grade epoxy has thermal properties in order to safely surround a temperature sensor so that it will not degrade when the temperature sensor is in use and since everything inherently thermally insulates no matter how small);

a pin partially disposed within a thermal insulator (e.g., element 70-stainless steel tubing section being interpreted as a pin); and a temperature sensor disposed within a pin (e.g., the combination of elements 11-thermistor and 68-thermistor wire being interpreted as the portion of the temperature sensor disposed within element 70).

8. With respect to claims 4–5, Cook et al. disclose a pin includes a hollow interior and a temperature sensor is disposed within a hollow interior (claim 4) and is in contact with an interior surface of a pin (claim 5) (e.g. elements 70-stainless steel tubing section is inherently hollow because it is a tube and at column 10, lines 27–29 Cook et al. teach that the thermistor wires are soldered within [emphasis Examiner's] the stainless steel tubing which makes it readily

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apparent that some portion of the tubing has to hollow in order for the wires to be soldered within it).

9. Regarding claims 6–8, Cook et al. disclose a thermal barrier disposed within a hollow interior (claim 6) and extends beyond a hollow interior of a pin and into an interior of a housing (claim 7) and isolating a temperature sensor (claim 6) (e.g., element 66); a sleeve inner portion disposed between a pin and thermal insulator (e.g., column 10, lines 19–21).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al., U.S. Patent 4,543,954.

Regarding claim 2, Cook et al. disclose the essential features of the claimed invention as described above except for a pacemaker cardioverter defibrillator. However, it is well known in

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the art to use a pacemaker cardioverter defibrillator because it yields the predictable results of controlling the rate of the heart just as the pacemaker controls the rate of the heart in the prior art of Cook et al.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Cook et al. to include a pacemaker cardioverter defibrillator to yield the predictable results of controlling the rate of the heart.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terri L. Smith whose telephone number is (571) 272-7146. The Examiner can normally be reached on Monday - Friday between 7:30 a.m. - 4:30 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLS
October 29, 2007

TLS
29 October 2007

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